

### **REMARKS**

Applicant thanks the Examiner for extending the courtesy of a personal interview with the undersigned attorney for Applicant on January 27, 2005. Although no agreement was reached during the interview, substantial progress was made in explaining to the Examiner how the pending claims distinguish over the prior art.

#### ***Claim Amendments***

Applicant amends claims 1 and 24 to add a limitation further characterizing the mesh as having a mesh density in the range of about 12 to 80%. Support for this amendment is found throughout the specification, particularly at page 3, lines 24-27 and page 19, line 22 – page 20, line 2. Claim 7 is amended, as discussed with the Examiner, to obviate the §112 rejection by replacing the term “cell types” with “cells.” Support for this amendment is likewise found throughout the specification.

#### ***The §112 Rejection***

The Examiner rejects claims 7 and 8, alleging that claim 7 is indefinite due to the use of the term “cell types.” As discussed during the interview, claim 7 is now amended to recite “cells.” This is a clear and well known term and the specification, at page 13, line 26-page 14, line 12, contains numerous examples of types of cells that can be used in connection with the present invention. Applicant submits that claims 7 and 8 are in full compliance with §112 and respectfully requests that this rejection be withdrawn.

#### ***The Prior Art Based Rejections***

The Examiner rejects claims 1, 2, 5, 7, 8 and 24 pursuant to 35 U.S.C. §102(b) as being anticipated by each of U.S. Patent No. 5,589,176 (Seare) and U.S. Patent No. 5,487,897 (Polson). Applicant respectfully traverses this rejection for the reasons discussed below.

As noted during the interview, the claimed method requires the use of a biocompatible tissue repair stimulating implant including a bioabsorbable polymeric foam component having pores with an open cell pore structure and a reinforcing component formed of a biocompatible, mesh-containing material having a mesh density in the range of about 12 to 80%, wherein the

foam component is integrated with the reinforcing component such that the pores of the foam component penetrate the mesh of the reinforcing component and interlock with the reinforcing component. The Seare reference fails to disclose the claimed method because it contains no disclosure of a polymeric *foam* component used with a tissue repair implant. A polymeric foam is known to be a porous structure in which the pores are formed by the use of a gas blowing agent. See, THE CONDENSED CHEMICAL DICTIONARY (8<sup>th</sup> Ed., 1971).

Seare does not disclose a polymeric foam. Instead it is directed to a porous article that is formed using a process known as Selectively Removable Open-Celled Porous Mold Form (SRO-CPMF). In this technique, a porous polymer is made by a process of dissolving or otherwise removing portions of a material within the polymer thereby creating voids in the polymer. Seare thus does not describe a polymer *foam*, nor does it describe a process of making a polymer *foam*. In fact, Seare actually teaches away from the use of a polymer foam material by stating in the background section, at column 2, lines 22-53, that porous materials formed with “bubble technology” have certain disadvantages.

Seare also fails to disclose a method such as that claimed in which a polymeric foam component of a tissue repair stimulating implant has a mesh-containing material having a mesh density in the range of about 12 to 80%. Thus, for all of the reasons noted above, the Seare reference fails to anticipate claims 1, 2, 5, 7, 8 and 24.

Polson also fails to anticipate claims 1, 2, 5, 7, 8 and 24 because, as discussed during the interview, Polson does not disclose a method of the type claimed that utilizes a tissue repair stimulating implant that has a mesh material integrated therein. Polson is merely directed to a biodegradable implant *precursor* and it fails to include any teaching of a mesh material. Accordingly, the rejection based on Polson should be withdrawn.

The Examiner also rejects claims 1-8 and 16-24 as being anticipated by U.S. Patent No. 6,306,424 (Vyakarnum), arguing that Vyakarnum discloses “a foamed composition that is comprised of biocompatible and bioabsorbable polymer foam and where the biocompatible foam has interconnecting pores.” Applicant disagrees with the Examiner’s characterization of Vyakarnum and submits that Vyakarnum does not anticipate claims 1-8 and 16-24 because it has no teaching directed to the foam being integrated and interlocked with the reinforcement component such that the pores of the foam component penetrate the mesh of the reinforcing

component and interlock with the reinforcing component. Vayakarnum also fails to disclose a method of the type claimed in which a polymeric foam component of a tissue repair stimulating implant has a mesh-containing material having a mesh density in the range of about 12 to 80%. For these reasons, the rejection based on Vyakarnum should be withdrawn.

In view of the foregoing, the pending application is deemed to be in condition for allowance and Applicant respectfully requests early allowance thereof. The Examiner is urged to contact the undersigned attorney for applicant in the event that such communication is deemed to expedite allowance of the application.

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Respectfully submitted,

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